



Again, The Gun Question; Enforcing the Laws We Have

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Every publicized shooting revives the debate about gun control without bringing the debaters closer together. The deaths of Dr. Michael Halberstam and John Lennon, and the attempted assassination of President Reagan, like the death of Robert F. Kennedy and the assault on George Wallace, stir emotions but produce no consensus. When people think an issue important but can make no progress toward resolving it, it is probably time to rethink the way in which they define it.

Essentially three views are in contention. One is to do nothing: Guns do not kill, people kill. A second is that a handgun exists only to kill and its production and possession should be tightly restricted. A third is that certain kinds of violent encounters are more likely to have lethal consequences if guns happen to be readily available and that society ought to devise ways of reducing that availability among people likely to be involved in those encounters.

The first view is correct but misleading. People pull triggers. And some triggers are pulled by people so determined that the gun is merely a tool. But many crimes are committed by persons without clear or strong intentions -- persons who are enraged, drunk or looking for trouble. In such cases, people let the means at hand determine what kind of force they will employ and against whom.

The second view is wrong, unfeasible and impolitic. There are handguns in at least one-fifth of all American households. The vast majority of these weapons are never used to threaten or injure anyone. Banning the production of new handguns might prevent that stock from increasing. Buying back existing guns might reduce that stock slightly, but it would be enormously expensive and, without production controls, futile. Larger reductions would require confiscation. And even if all these policies were adopted, and even if the reductions in ownership were great (say, by 50 percent), the remaining guns would easily support current rates of robberies at gunpoint for a decade.

But none of these policies is likely to be adopted, and for reasons having nothing to do with the presumed power of the National Rifle Association. The average legislator simply cannot afford to come before his or her constituents with the following proposal: "Your government, having failed to protect you against crime, now proposes to strip from you what you regard as an effective means of self-defense as well as an

enjoyable hobby." Never mind whether the belief about self-defense is true; gun ownership, from the First Lady to the average citizen, is testimony to the unshakeable power of that belief.

The third view is one that we wish policymakers to take more seriously than they have. We should recognize that people have a right to own guns but do not have the right to use them criminally. Moreover, we think that people who are found in possession of guns while committing a crime or participating in a violent dispute should lose both the gun and their freedom. Finally, we think that the police should be more active in intercepting the traffic in contraband guns and apprehending people carrying unlicensed guns in public places and that judges should deal with them more severely.

Federal and state laws now make it unlawful for convicted felons, ex-addicts, and mental defectives to possess a handgun. Moreover, in many states and most big cities, it is illegal to carry a concealed handgun except for a small number of people with police permits. The laws governing possession might usefully be tightened even further -- for example, by denying handguns to people convicted of violent misdemeanors (such as assault) or of chronic public drunkenness. The real problem, however, is to motivate the criminal justice system to take these or better laws seriously.

To see what this involves, it is first necessary to understand the different situations in which a weapon affects the outcome of a violent encounter. The first involves disputes -- family quarrels, barroom fights, street corner brawls among "friends." The traditional police response to such disputes is to pacify the opponents, perhaps separate them for the night and occasionally make an arrest if the assault seems to be serious, the officer's authority is challenged or the "victim" clearly intends to press charges. (Who is the "victim" and who the assailant in these disputes is often hard to decide. The victim may simply be the person who lost the fight.)

There is strong evidence that the presence of a gun in these situations raises dramatically the chance of a lethal outcome and that people who regularly engage in such disputes are much more likely than others of similar incomes and circumstances to be responsible for, or the victim of, a homicide. Yet there is equally strong evidence that communal disputes are not taken seriously by the criminal justice system. Either no arrest is made or the charges are dropped or the sentence is trivial. This is understandable, given the constraints: If only a simple assault (a misdemeanor) has occurred, the police cannot lawfully make an arrest without a signed complaint. And even if a complaint is forthcoming, the victim is likely to change her (sometimes his) mind the next day. Without an arrest, a search for a seizure of weapons is difficult, if not impossible.

We suggest that state law and police practice be amended so as to take violent disputes more seriously. Following the lead of Minnesota and other states, the police should be empowered to make arrests in these cases if they have probable cause to believe an assault has occurred, even if the assault is not felonious. Following the policy of the New York Police Department, officers should be encouraged to make arrests both to protect the victim and to deter, if possible, future assaults. And incident to these arrests, valid searches should be made for guns improperly in the possession of the disputants. Both the assault and the illegal possession of a weapon in these circumstances should be dealt with more sternly than now is the custom with judges who tend not to regard such matters as "real crime." That attitude may encourage a real crime later because a

predisposition to violence is unchecked by sanctions. These sanctions may involve jail or they may involve posting peace bonds, intensive probation or the like. The key is a clear penalty and the removal of the gun.

The second situation is the stranger-to-stranger violent crime -- muggings and robberies. The guns used by such criminals are often already possessed in violation of the law. For them, the problem is not tightening the laws involving carrying a weapon, but blocking the access these people have to supplies of guns and increasing the risks from carrying weapons. Moore's research indicates that the largest sources of supply of handguns to people who use them for stranger-to-stranger crimes are theft and the black market. In short, armed robbers usually violate gun laws in two ways: They have stolen their handgun, or bought it from somebody who did, and they are carrying it without a permit.

To reduce the black-market traffic in guns, the police should consider mounting more undercover "buy and bust" operations (much as they now do with respect to heroin and dangerous drugs) in order to make illegal gun dealers wary of dealing with strangers, to raise the price and difficulty of acquiring illegal guns (perhaps beyond the point that opportunistic, teen-age robbers will find it worthwhile) and to deter some people from going into the illegal gun business at all.

To inhibit the carrying of handguns, the police should become more aggressive in stopping suspicious people and where they have reasonable grounds for their suspicions, frisking (i.e., patting down) those stopped to obtain guns. Hand-held magnet meters, of the sort used by airport security guards, might make the street frisks easier and less intrusive. All this can be done without changing the law.

The success of under cover buys and aggressive patrolling depends partly on the extent to which judges will seriously penalize the unauthorized carrying of concealed weapons. Though judges often give more severe sentences to people who commit a crime using a gun, the available data suggest that a person convicted of illegally carrying or possessing a handgun is generally treated leniently. This is a serious mistake: A person in a public place with a gun and without a permit is often a person looking for trouble.

The Bartley-Fox law in Massachusetts requires a mandatory one-year jail sentence for any unlicensed person who carries a firearm. It was opposed by those who said the law would not be enforced and by those who said it would not have the desired effect. Both criticism appear to have been wrong -- the criminal justice system did not engage in wholesale evasions of the requirements of the law, and three studies that have been done of its effect all point to some decline in the proportion of the assaults that were committed with firearms. Assaults as a whole increased; firearm assaults decreased. The effect of Bartley-Fox might have been even greater if the police had been more aggressive in enforcing it (or less if it had not been so heavily publicized).

Note what we are suggesting: not "gun control" in any comprehensive sense, but rather increased pressure on the particular circumstances and people whose illegal behavior is most likely to be affected by the availability of a gun. Note also that to do these things requires action chiefly by state and local, not federal agencies. Bear in mind that motivating police and prosecutors to act in these ways is not easy. And note finally that real progress in reducing gun violence almost certainly requires methods -- aggressive

patrolling, undercover operations, tougher sentences -- that liberals instinctively dislike. We think, however, there is no way around these tough choices, and it is time we face up to them.

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